File No. 533

1886.

Collection No.

Mysore Residency

Pros. Serial Nos. 1 — 6

203

Subject.

Extension to the C + M Station of Ch XLV of the Code of Civil Procedure, 1882, relating to appeals to the Privy Council.

Previous References.

Later References.

SGPI— .27—25DCF—6-8 24—25,000.

RESIDENT'S OFFICE.

FILE No. 533 OF 1886

From

No.

Dated — Enc.

Received — Spare copies.

Subject.

Request to extend Chapter XLV of Civil Procedure Code to C & M. Station of Bangalore in view to appeals being preferred to Privy Council from the decision of the Resident.

Notes and orders.

Mr. J Smith Advocate orally moved the Court on the 3rd July 1886 for extension of Chapter XLV of C. C. P. (Act XIV of 1882) to the C & M Station on the ground that the said Chapter had been extended to the Hyderabad Assigned Districts and to the Cantonment of Secunderabad, and that the Judicial Administration of the Assigned Tract being now in the hands of the British Resident, there is no objection to the Privy Council

23

hearing

(Continuation of Note or Precis.)

hearing appeals from the decisions of the Resident and that it is but reasonable that the Subjects of the C & M Station should not, in this respect, be in a worse position than the subjects of Berar and Secundera=bada,

2. The Resident thereupon ~~re~~ passed the following order:- Serial 1

Registrar

I should like to know whether Chapter XLV of C. P. C. has been en=tended to Berar as to the cases of suits arising in the Secunderabad Cantonment which are I believe tried in appeal by the Resident.

We might ask the Asst Resident to inform us. But before doing so please first see if in entending the C. P. C. to Mysore originally or subse=quently to the C & M Station any thing was said as to the question of not entending Chapter XLV, apparently the words "Courts of British India" in

the

(Continuation of Note or Precis.)

the Chapter are a bar, as neither Mysore or the C & M. Station is British India.

But I presume that by order under the act by which acts are extended to the C & M Station the Chapter could be extended with verbal amendments.

(Initialled) J. B. L.

3/7/86

With reference to query in the order of the Resident dated 3-7-86 I beg to state that with regard to the Hyderabad Assigned District, the Cantonment of Secunderabad and the Cantonment of Bolarum, Chapter 45 (relating to appeals to Privy Council) was extended when extending the Act XIV of 1882 C. P. Code to those places. This I find from pages 34, 150 & 193 respectively of book entitled "List of B. enactments in force in Native States." As regards C & M. Station

Station, the reason for the omission is conjectured to be as follows:- When act X of 77 was in force in Mysore prior to the Rendition, the Chapter was omitted in its application to that Province as it was perhaps not considered desirable to make the Privy Council hear appeals from Courts of a Native State.

4. At the time of the rendition the said act as it was in force in Mysore was declared applicable to C & M Station. When act XIV of 1882 was introduced into the C & M Station, the modifications therein made simply followed those in act X of 77 and the point now in question seems to have been overlooked.

5. It is therefore doubtful whether Privy Council can hear appeals from decisions of Resident. But it is believed the Privy Council might assume jurisdiction over all British Courts by virtue

(Continuation of Note or Precis.)

virtue of their own ~~Statutes~~ Statutory powers.

(Initialled) R. Sk

24-8-86

6 The Resident thereupon passed the following order:-

Serial 2

Draft a letter to Government of India recommending the extension to the Assigned Tract or Cantonment of Bangalore of Chapter 45. Say that we understand that it appears to the Cantonment of Hyderabad and as the assigned Tract is under separate British Administration think it ought also to apply here.

(2) Say that we presume that the Chapter was omitted when Act X of 77 was extended to Mysore because the Courts including those at Bangalore were all then Courts of a Native State, but the assigned Tract is now administered for the British Government through the Maharajah retains the Suzerainty of the Tract.

(3) Important cases involving difficult

difficult points of law sometimes arise in the C & Jn. Station and it seems desirable that an appeal from the Court of the Resident should be possible. At present the law provides for no appeal and though it is believed that the Privy Council might assume jurisdiction over the Court as a British Court by virtue of its own Statutes, yet it seems desirable to put the matter beyond a doubt, and to regulate the Course of appeal.

(4) Add that the question has been raised in connection with an important case in which I was recently asked to review a decision of my predecessor in office on the ground of error in law. ——

—— The fact that the law provided no appeal against the Resident's decision was urged as an argument for admitting a review, and appeared to me to be

(Continuation of Note or Precis.)

be one of considerable force; but on the other hand these are still stronger reasons against a Judge sitting alone reviewing the judgment of his predecessor on the ground of simply of error of law.

(Initialled) J. B. L

25/8/86

y. Draft letter to Government of India and draft Notification submitted for approval. ——— In the draft Notification the words "in modification of the Foreign Department Notification No 529 I. dated 1st March 1883" have been inserted as, under that Notification, Chapter XLV of Act XIV of 1882 was omitted Please see page 16 of the printed list of Acts put up herewith. To that extent therefore, the new Notification modifies the old one, viz. No 529 I dated 1-3-83. cited above.

PSK
30.8.86. 17

+ no verbal amendments are needed

8. Letter to the Foreign Dept. issued, No. 2467/5336 dated 3rd September 1886. Serial No 3

BR

9. Copy of Notification of the Foreign Dept^t No 3538 I, dated 1st October 1886 Extending the provisions of Chapter 45 CCP (allowing appeals to the Privy Council) to the C^d & M Station, is forwarded to the Resident for information with reference to this Office letter No 2467—5336 dated 3rd Sep/86 Serial No 4 Serial No 3.

10. If the Resident pleases, a copy of this notification may be sent to the local papers in Bangalore for public information, as it is Special in its character.

PSK
11.10.86 11. The Not^n appears in the last Gazette of India and will probably be copied by the Local papers. The attention of the C. & S. Judge may be drawn to the Not^n when appeared in the Gazette

Resident 11-10

12 Book Sent for reference

(Continuation of Note or Precis.)

Also mark copies in red pencil not for insertion as advertisements but for information

12/10

13. Draft letter to C&S Judge as directed in para 11 above ~~Copies to be forwarded to the Editors of D.P, B.S & E.M~~, submitted for approval.

PSK
12.10.86.

14. Shown despatch dated. I enclose for issue ~~one~~ copy of despatch of India to Mysore

Send copies to Editor D. Post of Bangalore Chronicle marking highly endorsed for information

SCH
12/10

15. The fair letter to C&S Judge with a copy of the ~~instruction~~ of India & copies to Editors of D.P, ~~B.S~~ B.S & ~~E.M~~ are submitted for signature as directed.

If the Assistant Resident pleases, copies to Editor of E.M put up may also be issued. Submitted for orders.

PSK 13.10.86. 15

× not issued.

16 The letter to the C. of Sessions Judge issued, No. 11.C & endorsements to the Editors, Daily Post & Bangalore Spectator, No. 12.C. & 13.C. dated 13: October. 1886.

Regarding

Mr. Dickinson's remarks
Section Clause-X 4 V
of C.P.C has been
extended to persons
not the case Parties
arising in the
Secondary Court
Case Under. Suit
instituted by Firm
Residents
We submit

Draft letter signed by
India recommending the
extension to the assigned
Tract of Chuck 4[illegible]
Say that we understand
that it applies to
the cantonments of Bangalore
and as the assigned
Tract is under British
admin that it ought
also to apply to have

3 important cases would
difficult points of
law sometimes arise
in the C. & M. S.
and it seems desirable
that an appeal from
Court to the Resident should
should be provided.
At present the law
provides for no appeal
and though it is believed
that the Privy Council
might assume jurisdiction
over the Court as a

Say that we presume that
the Chuck was omitted
when Art XI
77 was extended to
Mysore ~~the State~~
because the Courts
~~Legislature was under~~
in charge from at Bangalore
~~British Cantonments~~
were all then Courts of
native State, ~~Courts~~
~~territory~~, but the assigned
Tract is now
administered
by the British Govt
though the Maharaja
retains the sovereignty
over the tract.

12

British consul by virtue of his own statutes yet it seems desirable to put the matter beyond a doubt and to regulate the course of appeal.

4 add that the question has been raised in connection with an important case in which I was recently asked to review a decision of my predecessor in office on the ground of error in law. The practice of the law provided no appeal against the Resident's decision was urged as an argument for admitting a review, and it seemed to me one of considerable force. On the other hand there are still stronger reasons against a Judge sitting alone reviewing the judgment of his predecessor on the ground simply of error of law.

25/8/86.

RESIDENT'S OFFICE.

For approval SW 30/8

Serial No.

[DRAFT.]—For approval.

No. 2467 / 5336 Encl 1.

Dated, 3 2/11 September 1886.

To

The Secretary

to the Government of India

Foreign Department

Sir,

I have the honor to recommend that His Excellency the Governor General in Council may be pleased to extend to the Civil and Military Station of Bangalore, Chapter XLV of the Code of Civil Procedure (Act XIV of 1882) relating to Appeals to the Queen in Council.

2. I understand that the said chapter applies to the Hyderabad Assigned Districts and to the Cantonment of Secunderabad, and as the Cand M

Station is now under British Administration distinct from that of the Maharajah, the provisions of that chapter may, I venture to think, fairly be made applicable to this Station also.

3. It is presumed that the chapter under reference was omitted when Act X of 1877 was extended to the Mysore Province because the courts including those at Bangalore were then courts of a Native State; but the Assigned Tract is now administered by and on behalf of the British Government, though H.H. The Maharajah retains the ~~Sovereignty~~ Suzerainty over the Tract.

4. Important cases involving difficult points of law sometimes arise in the

and M Station of Bangalore, and it seems desirable that an appeal from the Court of the Resident in Mysore should be provided for. At present the law provides for no appeal; and though it is believed that the Privy Council might assume jurisdiction over the Residents' Court as a British Court by virtue of its inherent Statutory powers, yet it seems desirable to put the matter beyond a doubt and to regulate the course of appeal.

5. I beg to add that the question has been raised in connection with an important case in which I was recently asked to review a decision of my predecessor in office on the ground of error of Law. The fact that the law provided no appeal against the decision of the Resident was urged as an argument for admitting a review, and

appeared to me to be one of considerable force, but on the other hand there are still stronger reasons against a Judge sitting alone reviewing the judgment of his predecessor on the ground simply of error of Law.

6. A Draft notification is submitted for approval and publication in the Gazette of India.

I have &c.

Resident

PSK
30.8.86.

Encl. to 13

Draft Notification

In modification of the Notification of the Government of India in the Foreign department No 529 I, dated the 1st March 1883, the Governor-General in Council is pleased to direct that the provisions of Chapter XLV of Act XIV of 1882 (The Code of Civil Procedure) shall, on and from the 1st day of 188, be in force throughout in the C & M station of Bangalore.

PSV
~~27-8-86~~
30-8-86.

3329

/ Copy /
No 3538 J.

Foreign Department
Simla
The 1st October 1886.

Notification.

In modification of the Notification of the Government of India in the Foreign Department, No 529 J, dated the 1st March 1883, the Governor-General in Council is pleased to extend the provisions of chapter XLV of the Code of Civil Procedure so far as they are applicable, to the Civil and Military Station of Bangalore.

/ Sd/ H. M. Durand
Secy to the Govt of India

No 3539 J.

Copy forwarded to the Resident in Mysore, for information with

5

with reference to his letter
No. 2467/5336, dated the 3rd September. Simla No 3
1886.

Foreign Departt.
Simla
the 8th October 1886

By Order, &c.,

Jr. Undersecy. to the
Govt. of India

FOREIGN DEPARTMENT.

NOTIFICATION.

Simla, the 1st October, 1886.

No. 3538 *I.*—In modification of the Notification of the Government of India in the Foreign Department, No. 529 I., dated the 1st March, 1883, the Governor-General in Council is pleased to extend the provisions of Chapter XLV of the Code of Civil Procedure, so far as they are applicable, to the Civil and Military Station of Bangalore.

H. M. DURAND,
Secretary to the Government of India.

RESIDENT'S OFFICE,

Serial No.

[DRAFT,]—For approval,

No. 12.C / 5336 + 13.C / 5336 2829+30 / 5336.

Confidential.
Dated, 13 Oct. 1886

Sl. No. 4

[Here enter Notification No. 3538. I. dated 1st. October 1886 from the Government of India, Foreign Department)

Copy forwarded to the Editor Daily Post, Rangoon Rangoon Spectator for information.

By order
Sd. G. A. Fraser
Asst. to the Resident

RESIDENT'S OFFICE.

Serial No.

[DRAFT.]—For approval.

No. 11.C / 5336 . 2828 / 5336.

Camp Kuppam
Dated, 15th Octr: 1886.

To

The Civil & Sessns: Judge
C & M Station,
Bangalore

Sir

I am directed to forward herewith for your information a Copy of the Notification of the Government of India in the Foreign Department, No. 3538 I dated the 7th October 1886, & causing the provisions of Ch: XLV of the Code of Civil Procedure to the C & M Station of Bangalore, and to state that the same has appeared in the last issue of the Gazette of India. —

Sl: k: 4.

† 2nd Octr: 1886.

I have the honor to be,

PSK
12.10.86.

12/10.

Asst Resdt